



# Ohio Legislative Service Commission

## Bill Analysis

Amber Hardesty

### H.B. 195

129th General Assembly  
(As Introduced)

**Reps.** Anielski and Baker, Murray, McKenney, Slaby, Grossman, Blessing

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## BILL SUMMARY

- Provides for licensing by the Ohio Casino Control Commission of skill-based amusement machine operators and distributors and sweepstakes terminal device operators and distributors.
- Prohibits a person from conducting a skill-based amusement machine or a sweepstakes terminal device without obtaining a license from the Ohio Casino Control Commission.
- Clarifies that regulation of skill-based amusement machines is governed by the Gambling Law and the Casino Gaming Law and not by the Consumer Sales Practices Act.
- Permits a legislative authority of a municipal corporation or an unincorporated area of a township to adopt an ordinance or resolution to prohibit the operation of sweepstakes terminal devices.
- Places limits on sweepstakes terminal device operator licenses by subjecting them to restrictions.
- Requires the Commission to limit the number of sweepstakes terminal device operator licenses in each county based on population.
- Within nine months of the bill's effective date, requires the Commission to adopt initial rules as are necessary for completing its functions.
- Expands the Commission's and its gaming agents' authority with regard to the detection and investigation of, the seizure of evidence allegedly relating to, and the apprehension and arrest of persons allegedly committing gaming offenses, to

include licensed skill-based amusement machines and sweepstakes terminal device premises.

- Permits the Commission to eject or exclude or authorize the ejection or exclusion of, and a gaming agent to eject, a person from a skill-based amusement machine facility or sweepstakes terminal device facility for specified reasons.
- Beginning six months after the effective date of the rules adopted by the Commission, states that any person who conducts a skill-based amusement machine or sweepstakes terminal device without a license is considered to be in violation of conducting illegal skill-based amusement machines or sweepstakes terminal devices.
- Grants the Permanent Joint Committee on Gaming and Wagering jurisdiction to review laws, fees, and penalties and make annual reports, related to skill-based amusement machines and sweepstakes terminal devices.
- States the license fees are to be set by Commission rule, subject to the review of the Joint Committee on Gaming and Wagering.
- Permits the Commission to employ legal staff services, with the consent of the Attorney General, but otherwise requires the Attorney General to serve as the Commission's chief legal representative.
- Specifies that skill-based amusement machine and sweepstakes terminal device operators will be responsible for any central system costs if the system is only for skill-based amusement sweepstakes terminal device gaming.
- Expands the civil penalties the Commission must impose against a person who violates the Casino Gaming Law to skill-based amusement machine operators and distributors and sweepstakes terminal device operators and distributors.
- Includes skill-based amusement machine operators and distributors and sweepstakes terminal device operators and distributors in the criminal penalties and activities under the Casino Gaming Law.
- Includes in the definition of "gambling device" skill-based amusement machines, slot machines, and sweepstakes terminal devices used in violation of the Gambling Law.
- Prohibits a person from conducting a slot machine without first obtaining a license under the Casino Gaming Law and states that a violation is a fourth degree felony.

- Specifies, in the case of instant bingo conducted by a veterans, fraternal, and sporting organization, that the payment by that organization of real property taxes and assessments levied on the premises in which instant bingo is conducted is to be subtracted from "net profit from the proceeds of the sale of instant bingo."
- Specifies that in no case must a charitable organization pay property taxes or assessments on premises that the charitable organization leases from another person to conduct bingo.
- Permits the Attorney General to refuse to grant a bingo or instant bingo license to any organization, or to revoke or suspend the license of any organization, that fails or has failed at any time to meet any requirement relating to sweepstakes terminal devices, skill-based amusement machines, and slot machines.

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## CONTENT AND OPERATION

The bill provides for licensing by the Ohio Casino Control Commission of skill-based amusement machine operators and distributors and sweepstakes terminal device operators and distributors.

### Skill-based amusement machines

Under the bill, a person must not conduct a skill-based amusement machine without first obtaining a license under the Casino Gaming Law. A violation of the

requirement is a fourth degree felony.<sup>1</sup> The bill creates licensure for both skill-based amusement machine distributors and skill-based amusement machine operators.

A "skill-based amusement machine," unchanged by the bill, means a mechanical, video, digital, or electronic device that rewards the player or players, if at all, only with merchandise prizes or with redeemable vouchers redeemable only for merchandise prizes, provided that with respect to rewards for playing the game all of the following apply:

- The wholesale value of a merchandise prize awarded as a result of the single play of a machine does not exceed \$10;
- Redeemable vouchers awarded for any single play of a machine are not redeemable for a merchandise prize with a wholesale value of more than \$10;
- Redeemable vouchers are not redeemable for a merchandise prize that has a wholesale value of more than \$10 times the fewest number of single plays necessary to accrue the redeemable vouchers required to obtain that prize; and
- Any redeemable vouchers or merchandise prizes are distributed at the site of the skill-based amusement machine at the time of play.

A "skill-based amusement machine distributor" is any person who purchases or obtains skill-based amusement machines and who does any of the following:

- Sells, offers for sale, leases, or otherwise provides or offers to provide skill-based amusement machines to another person for use in Ohio;
- Modifies, converts, adds to, or removes parts from skill-based amusement machines to further their promotion or sale for use in Ohio;
- Assembles completed skill-based amusement machines from raw materials, other items, or subparts.

A "skill-based amusement machine operator" is a person that provides skill-based amusement machines to a player or participant.<sup>2</sup>

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<sup>1</sup> R.C. 2915.06.

<sup>2</sup> R.C. 3772.01.

The bill further clarifies that regulation of skill-based amusement machines is governed by the Gambling Law and the Casino Gaming Law and not by the Consumer Sales Practices Act.<sup>3</sup>

### **Sweepstakes terminal devices**

The bill prohibits a person from conducting a sweepstakes through the use of a sweepstakes terminal device without first obtaining a license under the Casino Gaming Law and specifies that a violation of the requirement is a fourth degree felony.<sup>4</sup>

The bill defines "sweepstakes terminal device" as a mechanical, video, digital, or electronic machine or device, that is owned, leased, or otherwise possessed by any person conducting a sweepstakes, or by that person's partners, affiliates, subsidiaries, or contractors, that is intended to be used by a sweepstakes participant, and that is capable of displaying information on a screen or other mechanism.

The bill further specifies that a device is a sweepstakes terminal device whether or not any of the following apply:

- The device is server-based;
- The device uses a simulated game terminal as a representation of the prizes associated with the results of the sweepstakes entries;
- The device utilizes software such that the simulated game influences or determines the winning or value of the prize;
- The device selects prizes from a predetermined finite pool of entries;
- The device utilizes a mechanism that reveals the content of a predetermined sweepstakes entry;
- The device predetermines the prize results and stores those results for delivery at the time the sweepstakes entry results are revealed;
- The device utilizes software to create a game result;
- The device requires deposit of any money, coins, or tokens, or the use of any credit card, debit card, prepaid card, or any other method of payment to activate the electronic machine or device;

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<sup>3</sup> R.C. 2915.061.

<sup>4</sup> R.C. 2915.062.

- The device requires direct payment into it, or remote activation of it;
- The device requires purchase of a related product;
- The related product, if any, has legitimate value;
- The device reveals the prize incrementally, even though it must not influence if a prize is awarded or the value of any prize awarded;
- The device determines and associates the prize with an entry or entries at the time the sweepstakes is entered; and
- The device is a slot machine or other form of electrical, mechanical, or computer game.

"Enter" or "entry" means the act or process by which a person becomes eligible to receive any prize offered in a sweepstakes. "Prize" means any gift, award, gratuity, good, service, credit, reward, or any other thing of value, which may be transferred to a person, whether possession of the prize is actually transferred, or placed on an account or other record as evidence of the intent to transfer the prize. And, "sweepstakes" means any game, contest, advertising scheme or plan, or other promotion, but does not include bingo, whether or not consideration is required for a person to enter to win or become eligible to receive any prize, the determination of which is based upon chance.<sup>5</sup>

A person must not conduct a sweepstakes with the use of a sweepstakes terminal device, including the entry process or the reveal of a prize, or give to another person, any item or voucher redeemable for any of the following items as a prize for playing or participating in a sweepstakes:

- Cash, gift cards, negotiable instruments, or any equivalent;
- Plays on games of chance, state lottery tickets, bingo, or instant bingo;
- Firearms, tobacco, or alcoholic beverages; or
- A redeemable voucher that is redeemable for any of those items.

A violation of the above is sweepstakes terminal device prohibited conduct. A violation is a first degree misdemeanor for each redemption of a prize that is involved in the violation for a first offense and a fifth degree felony for each subsequent offense

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<sup>5</sup> R.C. 2915.01.

(for which the maximum fine authorized to be imposed for a fifth degree felony is required to be imposed).<sup>6</sup>

"Sweepstakes terminal device distributor" means any person who purchases or obtains sweepstakes terminal devices and who does any of the following:

- Sells, offers for sale, leases, or otherwise provides or offers to provide sweepstakes terminal devices to another person for use in Ohio;
- Modifies, converts, adds to, or removes parts from sweepstakes terminal devices to further their promotion or sale for use in Ohio;
- Assembles completed sweepstakes terminal devices from raw materials, other items, or subparts.<sup>7</sup>

The bill permits a legislative authority of a municipal corporation or an unincorporated area of a township to adopt an ordinance or resolution to prohibit the operation of sweepstakes terminal devices.<sup>8</sup>

### **Sweepstakes terminal device distributor license requirements**

The bill authorizes the Commission to issue a sweepstakes terminal device distributor license if an applicant meets all requirements under the Casino Gaming Law and any rule adopted by the Commission, and meets all requirements under the Gambling Law. The bill generally permits a person to apply for a sweepstakes terminal device distributor license.

The application must be made under oath on a form provided by the Commission and must contain, as prescribed by rule, any information required by the Commission to determine if the applicant is compliant with Ohio law and all rules adopted by the Commission, and be accompanied by a license fee as determined by Commission rule and a nonrefundable application fee, which are to cover all actual costs generated by each applicant and all background checks.

Before a sweepstakes terminal device distributor license is issued, the applicant must have all sweepstakes terminal devices examined and approved by a certified independent testing laboratory.

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<sup>6</sup> R.C. 2915.062.

<sup>7</sup> R.C. 3772.01.

<sup>8</sup> R.C. 2915.064.

The Commission may limit, place conditions on, restrict, suspend, or revoke a license for any violation of the Casino Gaming Law or rules or for any violation of the Gambling Law.<sup>9</sup>

### **Sweepstakes terminal device operator license requirements**

"Sweepstakes terminal device operator" means a person that provides sweepstakes terminal devices to a sweepstakes entrant.<sup>10</sup>

The Commission can issue a sweepstakes terminal device operator license if the applicant meets all requirements under the Casino Gaming Law and rules and meets all requirements under the Gambling Law. The bill also permits a person to apply for a sweepstakes terminal device operator license.

The application must be made under oath on a form provided by the Commission and contain, as prescribed by rule, any information required by the Commission to determine if the location is compliant with the Revised Code and all rules adopted by the Commission, and be accompanied by a license fee as determined by Commission rule and a nonrefundable license application fee, which are to cover all actual costs generated by each applicant and all background checks.

A sweepstakes terminal device operator license is subject to the following restrictions:

- Not more than five sweepstakes terminal devices are permitted in any location;
- No beer or intoxicating liquor can be served or consumed in any location;
- A sweepstakes terminal device operator, including that operator's partners, affiliates, subsidiaries, and contractors, cannot operate more than two locations.

The Commission must limit the number of licenses in each county based on the following:

- If the county has a population of 50,000 or less, the Commission must issue not more than four licenses;

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<sup>9</sup> R.C. 3772.34.

<sup>10</sup> R.C. 3772.01.

- If the county has a population of greater than 50,000, but less than 100,000, the Commission must issue not more than eight licenses;
- If the county has a population of 100,000 or greater, but less than 200,000, the Commission must issue not more than 16 licenses;
- If the county has a population of 200,000 or greater, but less than 500,000, the Commission must issue not more than 32 licenses;
- If the county has a population of 500,000 or greater, the Commission must issue not more than 64 licenses.

The Commission may limit, place conditions on, restrict, suspend, or revoke a license for any violation of the Casino Gaming Law or rules or for any violation of the Gambling Law.<sup>11</sup>

### **Authority of the Ohio Casino Control Commission**

Beginning on July 1, 2011, the Ohio Casino Control Commission assumes jurisdiction over the regulation of skill-based amusement machines and sweepstakes terminal devices. To ensure the integrity of skill-based amusement machines and sweepstakes terminal devices, the Commission can complete the functions of licensing, regulating, investigating, and penalizing skill-based amusement machine distributors and operators and sweepstakes terminal device distributors and operators.<sup>12</sup>

All Commission members must vote on the approval of, and the suspension or revocation of, the licenses related to skill-based amusement machines and sweepstakes terminal devices.<sup>13</sup>

Within nine months of the bill's effective date, the Commission must adopt initial rules as are necessary for completing its functions. The Commission's rules must include the following:

- The information to be furnished by an applicant or licensee;
- The certification standards and duties of an independent testing laboratory and the relationship between the Commission, the laboratory, and the licensees;

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<sup>11</sup> R.C. 3772.35.

<sup>12</sup> R.C. 3772.03.

<sup>13</sup> R.C. 3772.02.

- The minimum amount of insurance that must be maintained by a skill-based amusement machine distributor or operator or sweepstakes terminal device distributor or operator;
- The design of gaming supplies, devices, and equipment to be distributed by skill-based amusement distributors and operators and sweepstakes terminal device distributors and operators;
- For all licensed skill-based amusement machine gaming and sweepstakes terminal device gaming: the permitted gaming, gaming supplies, devices, and equipment, the area in which the permitted gaming may be conducted, the method of operation according to which the permitted gaming is to be conducted, and gaming devices and equipment that meet the Ohio standards;
- The adoption of standards regarding the marketing materials of a skill-based amusement machine distributor and operator and a sweepstakes terminal device distributor and operator;
- A requirement that the records, including financial statements, of any skill-based amusement machine distributor and operator and sweepstakes terminal device distributor and operator be maintained as prescribed by the Commission and made available for inspection upon demand by the Commission;
- Permitting a licensed skill-based amusement machine distributor or operator or sweepstakes terminal device distributor or operator to question a person suspected of violating the Casino Gaming Law;
- The manner in which winnings and compensation from skill-based amusement machines or sweepstakes terminal devices must be computed and reported;
- The technical standards and requirements that are to be met by security and surveillance equipment and standards and requirements to be met by personnel who are employed at a licensee's facilities, and standards and requirements for the provision of security at and surveillance of a licensee's facilities;
- The accounting and auditing standards skill-based amusement distributors and operators and sweepstakes terminal device distributors and operators must keep, and the means by which those entities must assist the Tax Commissioner in levying and collecting all applicable taxes;

- The standards for the repair of skill-based amusement machines and sweepstakes terminal devices;
- Any other thing necessary and proper for successful and efficient regulation of skill-based amusement machines and sweepstakes terminal devices.

The bill expands the Commission's and its gaming agents' authority with regard to the detection and investigation of, the seizure of evidence allegedly relating to, and the apprehension and arrest of persons allegedly committing gaming offenses, to include licensed skill-based amusement machines and sweepstakes terminal device premises.

The Commission can eject or exclude or authorize the ejection or exclusion of, and a gaming agent can eject a person from, a skill-based amusement machine facility or sweepstakes terminal device facility for specified reasons.<sup>14</sup>

The bill permits the Commission to do the following related to skill-based amusement machines and sweepstakes terminal devices:

- Inspect and examine all premises where such gaming is conducted or such gaming supplies, devices, or equipment are manufactured, sold, or distributed;
- Inspect all related supplies, devices, and equipment in or about such a licensed facility;
- Summarily impound and seize and remove from such a premises, gaming supplies, devices, and equipment for the purpose of examination and inspection;
- Audit licensed operations, including those that have ceased operation;
- Take any other necessary and reasonable action to determine if a violation of any provision of the Gambling Law or the Casino Gaming Law has occurred.<sup>15</sup>

Because the bill expands the license-granting authority of the Commission to include a license of skill-based amusement device distributor or operator or

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<sup>14</sup> R.C. 3772.03.

<sup>15</sup> R.C. 3772.033.

sweepstakes terminal device distributor or operator, it includes those applicants in the continuing law that specifies characteristics the Commission must consider in licensing. All applicants must establish their suitability for a license by clear and convincing evidence. An issued license must be for not more than three years, as determined by Commission rule.

The Commission must not issue a license if the applicant: (1) has been convicted of a disqualifying offense, (2) has submitted an application for a license that contains false information, (3) is a Commission member, (4) owns an unlawful ownership interest, (5) violates specific rules related to denial of licensure, (6) is a member of or employed by a gaming regulatory body or is employed by an Ohio governmental unit, or (7) is ineligible as determined by the Commission.

A "disqualifying offense" means any gambling offense, any theft offense, any offense having an element of fraud or misrepresentation, any offense having an element of moral turpitude, and any felony not otherwise included in the foregoing list.<sup>16</sup>

The Commission must continue to observe the conduct of all licensees and all other persons having a material involvement with a licensee. The bill states that a license is a revocable privilege and that no licensee has a vested right in or under any license.<sup>17</sup>

Beginning six months after the effective date of the rules adopted by the Commission, any person who conducts a skill-based amusement machine or sweepstakes terminal device without a license issued by the Commission is considered to be in violation of conducting illegal skill-based amusement machines or sweepstakes terminal devices.<sup>18</sup>

### **Permanent Joint Committee on Gaming and Wagering**

Under the bill, the Permanent Joint Committee on Gaming and Wagering has jurisdiction to review laws, fees, and penalties and make annual reports, related to all licensed gaming, including skill-based amusement machines and sweepstakes terminal devices.<sup>19</sup>

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<sup>16</sup> R.C. 3772.07.

<sup>17</sup> R.C. 3772.10.

<sup>18</sup> Section 3.

<sup>19</sup> R.C. 3772.032.

## **Executive Director**

Under the bill, the Commission's Executive Director's oversight is expanded to include skill-based amusement machines and sweepstakes terminal devices. Therefore, the Executive Director must advise the Commission regarding the operation and administration of those machines and devices and prepare a monthly accounting report of related revenues.<sup>20</sup>

## **Criminal records checks**

The Commission must obtain a criminal records check of the person who is to be licensed before issuing a license for a skill-based amusement device distributor or operator or sweepstakes terminal device distributor or operator. The Commission must pay the fee the Bureau of Criminal Identification and Investigation charges for criminal records checks. An applicant for a skill-based amusement machine distributor or operator or sweepstakes terminal device distributor or operator license must reimburse the Commission for the amount of the fee paid on the applicant's behalf.<sup>21</sup>

## **Fees**

States the license fees for the following are to be set by Commission rule, subject to the review of the Joint Committee on Gaming and Wagering: a skill-based amusement machine distributor; a skill-based amusement machine operator; a sweepstakes terminal device distributor; a sweepstakes terminal device operator. Additionally, the Commission can assess an applicant a reasonable fee in the amount necessary to process an application.<sup>22</sup>

## **Purchase or lease of equipment and supplies**

A skill-based amusement machine distributor and sweepstakes terminal device distributor must keep books and records for the furnishing of equipment, devices, and supplies to gaming operations separate from books and records of any other business operated by the distributor. A skill-based amusement machine distributor and sweepstakes terminal device distributor must file a quarterly return with the Commission listing all sales and leases. Also, at least once a year as determined by the Commission, a skill-based amusement machine distributor and sweepstakes terminal device distributor must furnish to the Commission a list of all equipment, devices, and supplies offered for sale or lease in Ohio.

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<sup>20</sup> R.C. 3772.06.

<sup>21</sup> R.C. 3772.07.

<sup>22</sup> R.C. 3772.17.

Further, the bill requires a skill-based amusement machine distributor and a sweepstakes terminal device distributor to permanently affix the distributor's name, as filed with the Commission, to all of the distributor's gaming-related equipment, devices, and supplies used or offered for sale in Ohio. The bill requires a skill-based amusement machine distributor and sweepstakes terminal device distributor to provide only machines or devices that have been approved by the Commission to licensed operators. Also, a skill-based amusement machine distributor or sweepstakes terminal devices distributor must accept payment only by check or electronic funds transfer, as approved by the Commission.<sup>23</sup>

## **Prohibited licenses**

Under the bill, a skill-based amusement machine distributor and operator and sweepstakes terminal device distributor and operator must not do any of the following:

- Obtain a license to operate a check-cashing business;
- Obtain a license to provide loans under the Small Loan Law;
- Obtain a license to provide loans under the Short-term Loan Law.<sup>24</sup>

## **Authority of Attorney General**

The Commission may employ legal staff services, with the consent of the Attorney General, but otherwise the Attorney General must serve as the Commission's chief legal representative. The Attorney General can appoint special counsel to assist in the Commission's representation.<sup>25</sup> Upon receiving a request from the Commission or the Executive Director, the bill permits, instead of requires, the Attorney General to commence and prosecute an action on behalf of the Commission to completion.<sup>26</sup>

## **Central system**

If the Commission determines that a central system is necessary and adopts rules authorizing a central system, specifies that skill-based amusement machine operators and sweepstakes terminal device operators will be responsible for the central system

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<sup>23</sup> R.C. 3772.21.

<sup>24</sup> R.C. 3772.23.

<sup>25</sup> R.C. 3772.033.

<sup>26</sup> R.C. 3772.30.

costs if the system is only for skill-based amusement gaming and sweepstakes terminal device gaming.<sup>27</sup>

## **Enforcement of Casino Gaming Law**

The Commission may suspend or revoke a license of skill-based amusement machine operators and distributors and sweepstakes terminal device operators and distributors. The bill expands the civil penalties the Commission must impose against a person who violates the Casino Gaming Law to skill-based amusement machine operators and distributors and sweepstakes terminal device operators and distributors.

Additionally, the bill includes skill-based amusement machine operators and distributors and sweepstakes terminal device operators and distributors in the criminal penalties and activities under the Casino Gaming Law. A person who is convicted of a criminal offense described in the Casino Gaming Law or the Gambling Law can be barred for a period of up to five years from entering a location licensed by the Commission.<sup>28</sup>

### **Adjudications**

If the Commission finds during an adjudication that a skill-based amusement machines distributor or operator or sweepstakes terminal devices distributor or operator has violated the Casino Gaming Law or the Gambling Law, the Commission may issue an order that limits, conditions, restricts, suspends, or revokes a license or to fine a licensee.<sup>29</sup>

### **Gambling Law, generally**

The bill includes in the definition of "gambling device" skill-based amusement machines, slot machines, and sweepstakes terminal devices used in violation of the Gambling Law. Therefore, a person unlawfully using these machines and devices can be guilty of gambling, a first degree misdemeanor for the first offense or a fifth degree felony for subsequent offenses.<sup>30</sup>

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<sup>27</sup> R.C. 3772.31.

<sup>28</sup> R.C. 3772.99.

<sup>29</sup> R.C. 3772.04.

<sup>30</sup> R.C. 2915.01 and 2915.02, not in the bill.

Makes slot machine and sweepstakes terminal device prohibited conduct (skill-based amusement machine prohibited conduct is a gambling offense under continuing law) a "gambling offense."<sup>31</sup>

The bill prohibits an owner or lessee, or person having custody, control, or supervision of premises from using or occupying the premises or from recklessly permitting the premises to be used in violation of the provisions of Ohio law that require a license to operate skill-based amusement machines, slot machines, and sweepstakes terminal devices. Premises used or occupied in violation of the above, constitute a nuisance subject to abatement.<sup>32</sup>

### **Slot machine conduct**

The bill prohibits a person from conducting a slot machine without first obtaining a license under the Casino Gaming Law and states that a violation is a fourth degree felony.<sup>33</sup>

### **Bingo law changes**

The bill specifies, in the case of instant bingo conducted by a veterans, fraternal, and sporting organization, that the payment by that organization of real property taxes and assessments levied on the premises in which instant bingo is conducted is to be subtracted from "net profit from the proceeds of the sale of instant bingo."<sup>34</sup> Further, the bill specifies that in no case must a charitable organization pay property taxes or assessments on premises that the charitable organization leases from another person to conduct bingo.<sup>35</sup>

Additionally, under the bill the Attorney General may refuse to grant a bingo or instant bingo license to any organization, or revoke or suspend the license of any organization, that fails or has failed at any time to meet any requirement relating to sweepstakes terminal devices, skill-based amusement machines, and slot machines.<sup>36</sup>

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<sup>31</sup> R.C. 2915.01.

<sup>32</sup> R.C. 2915.03.

<sup>33</sup> R.C. 2915.063.

<sup>34</sup> R.C. 2915.01.

<sup>35</sup> R.C. 2915.09.

<sup>36</sup> R.C. 2915.08.

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## HISTORY

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